

#099462

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
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2017 APR 21 AM 1:15

DEPUTY CLERK

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Trenton Harris,

Civil Action No.: _____

Plaintiff,

v.

8-17CV1067-G

CNU of Texas, LLC
Defendant.

COMPLAINT

For this Complaint, the Plaintiff, Trenton Harris, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. 227 §, et seq. (the "TCPA") by negligently, knowingly, and/or willfully placing automated calls to Plaintiff's cellular phone without consent, thereby violating the TCPA, and the invasions of the Plaintiff's personal privacy.
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) & (c), because Plaintiff resides within the Northern District of Texas, a substantial

portion of the events or omissions giving rise to the claim occurred in this District, and Defendant regularly transacts business in this District.

PARTIES

3. The Plaintiff, TRENTON HARRIS ("Plaintiff" or "Mr. Harris"), is an adult individual residing in Dallas, Texas, and is a "person" as defined by 47 U.S.C. § 153(39).

4. Defendant CNU OF TEXAS, LLC ("Defendant" or "CASHNET", is doing business in the State of Texas.

5. Defendant is and at all times mentioned herein was, a corporation and is a "person," as defined by 47 U.S.C. § 153 (39).

6. CASHNET at all times acted by and through one or more collectors.

FACTS

7. Beginning in and around February, 2017, CASHNET placed calls to Plaintiff's cellular telephone, number 858-335-9276.

8. At all times mentioned herein, CASHNET called Plaintiff using an automated telephone dialer system ("ATDS" or "predictive dialer") and/or by using an artificial or prerecorded voice.

9. On February 14, 2017, in a three minute phone call that began at 2:21 p.m., Plaintiff called the Defendant and spoke with a CASHNET

representative (the "February 14, 2017 Call"). During this call the Plaintiff advised CASHNET to cease all further communications and revoked consent to call him on his cell phone.

10. Furthermore, on February 21, 2017, a letter was sent by certified mail return receipt requested (the "February 21, 2017 letter"). This letter was received by the Defendant and signed for on February 24, 2017. In this letter the Plaintiff again advised CASHNET to cease all communications and stop all further calls to his cell phone.

11. Plaintiff continued receiving daily automated phone calls on his cell phone from CASHNET despite his requests to cease all communications.

12. In specific, the Plaintiff documented the following illegal communications from CASHNET:

a. On February 15, 2017, at 2:33pm Plaintiff received a phone call on his cell phone from 1-866-653-2116. Plaintiff did not answer the phone. Plaintiff looked up the phone number and found it to be the Defendant's phone number. Defendant hung up and did not leave a message.

b. On February 16, 2017, at 9:05am Plaintiff received a phone call on his cell phone from Defendant's phone number.

c. On February 17, 2017, at 9:28am Plaintiff received a phone call on his cell phone from Defendant's phone number.

d. On February 23, 2017, at 9:03am Plaintiff received a phone call on his cell phone from Defendant's phone number.

e. On February 24, 2017, at 1:31pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

f. On February 28, 2017, at 1:12pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

g. On March 1, 2017, at 12:46pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

h. On March 2, 2017, at 12:34pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

i. On March 3, 2017, at 1:22pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

j. On March 7, 2017, at 10:41am Plaintiff received a phone call on his cell phone from Defendant's phone number.

k. On March 8, 2017, at 10:27am Plaintiff received a phone call on his cell phone from Defendant's phone number.

l. On March 9, 2017, at 10:30am Plaintiff received a phone call on his cell phone from Defendant's phone number.

m. On March 10, 2017, at 11:50am Plaintiff received a phone call on his cell phone from Defendant's phone number.

n. On March 13, 2017, at 11:51am Plaintiff received a phone call on his cell phone from Defendant's phone number.

o. On March 14, 2017, at 11:59am Plaintiff received a phone call on his cell phone from Defendant's phone number.

p. On March 15, 2017, at 12:08pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

q. On March 16, 2017, at 12:20pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

r. On March 17, 2017, at 11:43am Plaintiff received a phone call on his cell phone from Defendant's phone number.

s. On March 20, 2017, at 10:23am Plaintiff received a phone call on his cell phone from Defendant's phone number.

t. On March 21, 2017, at 10:45am Plaintiff received a phone call on his cell phone from Defendant's phone number.

u. On March 22, 2017, at 12:37pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

v. On March 23, 2017, at 3:01pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

w. On March 24, 2017, at 11:54am Plaintiff received a phone call on his cell phone from Defendant's phone number.

x. On March 27, 2017, at 3:14pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

y. On March 28, 2017, at 2:51pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

z. On March 29, 2017, at 2:30pm Plaintiff received a phone call on his cell phone from Defendant's phone number. A woman calling herself "Jasmine" from "CNU" left a at 28 second pre-recorded voicemail message stating there was a "time sensitive issue to discuss" and provided a phone number to call, which was 1-888-801-9078, a phone number belonging to Defendant.

aa. On March 30, 2017, at 4:05pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

bb. On April 3, 2017, at 4:17pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

cc. On April 5, 2017, at 5:53pm Plaintiff received a phone call on his cell phone from Defendant's phone number.

13. Plaintiff was contacted nearly every day after the Defendant was placed on notice that he revoked permission to contact him on his cell phone.

THE TELEPHONE CONSUMER PROTECTION

ACT OF 1991

14. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding telemarketing practices.

15. The TCPA regulates the use of automated telephone dialing systems.

16. 47 U.S.C. § 227(a)(1) defines an automatic telephone dialing system ("ATDS") as equipment having the capacity –

(A) to store or produce telephone numbers to be called, using random or sequential number generator; and

(B) to dial such numbers.

17. Specifically, 47 U.S.C. § 227(1)(A)(iii) prohibits any call using an ATDS or an artificial or prerecorded voice to a cellular phone without prior express consent by the person being called, unless the call is for an emergency.

18. According to the Federal Communications Commission, such calls are prohibited because automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls. The

FCC also recognized that wireless customers are charged for incoming calls.¹

19. On January 4, 2008, the FCC released a Declaratory Ruling where it confirmed that autodialed and prerecorded calls to a wireless number by a creditor, or on behalf of a creditor, are permitted only if the calls are made with the “prior express consent” of the called party.²

20. On July 10, 2015, the FCC issued FCC Order 15-72 where the FCC³ stated that “a caller may not limit the manner in which revocation of prior express consent to call may occur” and that the “burden is on the caller to prove it obtained the necessary prior express consent”. *Id.* at ¶ 30.

21. Further, consumers (the Plaintiff) may revoke consent through any reasonable means. *Id.* at ¶ 47.

22. Nothing in the language of the TCPA or its legislative history supports the notion that Congress intended to override a consumer’s common law right to revoke consent. *Id.* at ¶ 58.

¹ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Red 14014 (2003).

² *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, 23 FCC Red 559, 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

³ Declaratory Ruling and Order, Adopted June 18, 2015, and Released July 10, 2015 regarding *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135 (https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1.pdf).

23. Some consumers may find unwanted intrusions by phone more offensive than home mailings because they can cost them money and because, for many, their phone is with them at almost all times. *Id.* at ¶ 61.

24. Consumers have a right to revoke consent, using any reasonable method including orally or in writing. *Id.* at ¶ 64.

ALLEGATIONS APPLICABLE TO ALL TCPA

COUNTS

25. The Plaintiff received numerous calls from the Defendant to his cell phone.

26. It is believed that the Defendant employs an automatic telephone dialing system ("ATDS") which meets the definition set forth in 47 U.S.C. § 227(a)(1).

27. Defendant or its agent(s) contacted Plaintiff on Plaintiff's cell phone number ending in "9276" via an ATDS as defined by 47 U.S.C. § 227(a)(1), as prohibited by 47 U.S.C. § 227(b)(1)(A).

28. On February 14, 2017, in a three-minute phone call that began at 2:21pm., Plaintiff called the Defendant and spoke with a CASHNET representative. During this call the Plaintiff instructed Defendant and/or its

agent(s) not to call the Plaintiff's cell phone again thereby revoking consent, if any ever existed, to be contacted by Defendant via an ATDS.

29. On February 21, 2017, Plaintiff mailed a letter certified mail return receipt requested that requested Defendant cease all further communications and stop calling the Plaintiff's cell phone.

30. Defendant continued to place calls to the Plaintiff's cellular phone without consent using an ATDS in violation of the TCPA numerous times thereafter.

31. Defendant's ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

32. The telephone number that Defendant used to contact Plaintiff was and is assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

33. Defendant's calls to Plaintiff's cellular telephone were not for "emergency purposes."

34. Pursuant to the TCPA and the FCC's January 2008 Declaratory Ruling, the burden is on Defendant to demonstrate that it had prior express consent to call Plaintiff's cell phone with an ATDS.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT – (47 U.S.C. § 227, *et seq.*)

35. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

36. Defendant negligently placed multiple automated calls to Plaintiff's cell phone without Plaintiff's prior express consent.

37. Each of the aforementioned calls by the Defendant constitutes a negligent violation of the TCPA.

38. As a result of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

39. Plaintiff is entitled to and seeks injunctive relief prohibiting such conduct by Defendant in the future.

COUNT II

Knowing and/or Willful Violations of the Telephone Consumer Protection Act, (47 U.S.C. § 227, *et seq.*)

40. Plaintiff repeats and reallages the above paragraphs of this Complaint and incorporates them herein by reference.

41. Defendant knowingly and/or willfully placed multiple automated calls to Plaintiffs cell phone without Plaintiff's prior express consent.

42. Each of the aforementioned calls by the Defendant constitutes a knowing and/or willful violation of the TCPA.

43. As a result of Defendant's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages up to \$1,500.00 for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

44. Plaintiff is entitled to seek injunctive relief prohibiting such conduct by Defendant in the future.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendants as follows:

1. Injunctive relief prohibiting such violations of the TCPA by Defendant in the future.
2. Statutory damages of \$500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);

3. Treble damages of up to \$1,500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C)
4. Actual damages from the Defendant for all the damages including emotional distress suffered as a result of the intentional, reckless, and/or negligent invasions of privacy in an amount to be determined at trial for the Plaintiff;
5. Punitive damages; and
6. Such other and further relief that the court deems appropriate.

Date: April 21, 2017

Respectfully submitted,

Trenton Harris

Phone: (858) 335-9276

Email: trenttharris@yahoo.com

8516 Westfield DR

Dallas, TX 75243

Trenton Harris

JS 44 (Rev. 08/16) - TXND (Rev. 12/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Trenton Harris

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Dallas

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

CNU OF Texas, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

8-17CV1067-G

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 USC 227 (TCPA)

Brief description of cause:

Violations of the Telephone Consumer Protection ACT

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

April 21, 2017

SIGNATURE OF ATTORNEY OF RECORD

Trenton Harris

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____